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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/820,757 Confirmation No.: 3864  
Applicant : HANADA et al.  
Filed: : March 30, 2001  
TC/A.U. : 1772  
Examiner : Catherine A. Simone  
  
Docket No. : 7372/70910  
Customer Nos. : 42798 and 22242

Commissioner for Patents  
U.S. Patent and Trademark Office  
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Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

July 1, 2004

**PETITION FOR RE-DETERMINATION OF  
CORRECTION OF PATENT TERM ADJUSTMENT  
UNDER 35 U.S.C. §1.54(b)**

Sir:

Applicants respectfully petition to correct the Patent Term Adjustment of "0 day(s)" reported in the PTO's communication titled "Determination of Patent Term Extension Under 35 U.S.C. 154(b)."

Applicants respectfully submit they are entitled to patent term adjustment to reflect the delay attributable to the mis-mailing of official PTO correspondence and the ensuing delays associated therewith.

The PTO pair web site reports PTO delays of "38 days" and "63 days." The PTO delays are much longer.

Applicants request patent term adjustment for at least the period of time from April 17, 2003 until the PTO corrected its docketing records and corrected the mailing address as of March 15, 2004.

Applicants are entitled to patent term adjustment because the "88 days of Applicants' delay listed in the PTO PAIR system is mistaken.

Applicants are entitled to patent term adjustment because the "94 days" of Applicants' delay listed in the PTO PAIR system is mistaken.

### Chronology

A power of attorney to the undersigned was filed herein in January 25, 2002. Duplicate copies of same have been filed several times and each shows the January 25, 2002 PTO mail room stamp. Pillsbury Winthrop had no power of attorney. It was revoked by the January 25, 2002 power of attorney to the undersigned and Fitch Even Tabin & Flannery.

On or about June 4, 2002, Applicants' legal representative filed a Status Request of June 4, 2002.

On August 29, 2002, Applicants re-submitted another copy of the January 25, 2002 power of attorney. Pillsbury Winthrop had no power of attorney. It was revoked.

On September 4, 2002, the PTO responded by stating an Office Action was mailed to Pillsbury Winthrop (who has no power of attorney).

A copy of the prior office action was later obtained, but the time for response had already been running.

Applicants were unsuccessful in having the July 31, 2002 Office Action re-mailed and the date re-set.

Applicants filed an Amendment on February 3, 2003, and referenced the power of attorney filed more than a year earlier on January 25, 2002.

Pillsbury Winthrop, LLP received an April 17, 2003 Office Action and did not forward it to the undersigned until June 30, 2003. Pillsbury Winthrop had no power of attorney for this application; it was revoked 18 months earlier.

On July 2, 2003, Applicants filed still another paper requesting the PTO to correct its records and stop mailing official correspondence to a law firm (Pillsbury Winthrop LLP) having no power of attorney in this case. As of July 2, 2003, the PTO was still mis-mailing official correspondence to Pillsbury Winthrop despite such firm having had its power of attorney revoked 18 months earlier.

Applicants' legal representative made telephone calls but was not able to obtain confirmation of the July 2, 2003 paper nor of any action taken in response thereto.

Applicants filed an Amendment on July 17, 2003 to avoid being tagged with "Applicant delay."

The PTO issued an Office Action on September 2, 2003, but did not acknowledge the Amendment of July 17, 2003.

Applicants filed a paper on September 24, 2003 and again on October 6, 2003 seeking correction of the PTO records and entry of the July 17, 2003 Amendment.

Applicants were assured orally the PTO would act favorably upon the request.

Instead, on October 23, 2003 the PTO issued an Advisory Action. The PTO treated the July 17, 2003 Amendment as if it were filed *later*, and refused entry. This is nonsensical.

On October 30, 2003, another paper was again filed because it was clear from oral inquiry to the PTO and from the October 23, 2003 Advisory Action that the PTO had failed to correct the record.

Phone messages in the time period from October 2003 through February 2004, culminated in a further oral commitment from the SPE on February 26, 2004 that the address would be corrected and dates re-set.

An Office Action was re-mailed on March 15, 2004 and Applicants timely responded on May 13, 2004.

The delay from the summer of 2003 (July 2, 2003) through at least March 15, 2004 was caused by the PTO for mailing Official communications to a law firm having no power of attorney (Pillsbury Winthrop, LLP).

### **Conclusion**

The PTO's mis-mailing of Official correspondence and not timely correcting it adversely affected the prosecution of this application.

Applicants petition for patent term restoration of 88 days + 94 days + 38 days + 63 days for a total of 283 days.

The petition fee may be charged to our deposit account no. 06-1135, under Order No. 7372/70910.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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